

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

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February 24, 1984

Harold Wilsey, Jr.
County Counsel
Colusa County
200 Sixth Street
Colusa, CA 95932

Re: Your Request for Advice
Our No. A-84-023

Dear Mr. Wilsey:

Your letter requests advice on behalf of four Colusa County supervisors. You have stated the facts as follows.

FACTS

The Colusa County Board of Supervisors is considering the possible purchase of an office building. The building is currently owned by the Production Credit Association - Federal Land Bank ("PCA"), which is a farm loan cooperative.

Four members of the Board are shareholders in the cooperative (membership is required to obtain loans). Three^{1/} of these have loans from the cooperative, the fourth^{2/} has had loans in the past, but has none now. Each of the three who currently have loans also hold shares in the PCA cooperative valued in excess of \$1,000. The fourth member's shares are valued at less than \$1,000. Based upon your research and inquiries you consider PCA to be a "business entity,"^{3/}

^{1/} These three are David G. Womble, Floyd Meyers Marsh and Shelden Morris.

^{2/} This member is Howard Foster.

^{3/} Government Code Section 82005 defines the term "business entity" as used in the Political Reform Act of 1974 (the "Act") - Government Code Sections 81000-91014. All statutory references are to the Government Code.

operated for profit, although it is a cooperative. However, in my telephone conversation with Mr. Lee Jackson, Vice President of PCA, he has advised me that PCA is really a nonprofit entity whose excess revenues merely go into reserves and lowered interest rates. In reality, it is an agri-business credit union.^{4/}

QUESTION

You have asked whether any or all of the four supervisors are disqualified^{5/} from participating in the decisions involving purchase of the building from the PCA and, if three or more are, how to apply the rule of legally required participation. Section 87101.

ANALYSIS

The Political Reform Act requires that public officials disqualify themselves from participating in, making, or using their official positions to influence, any government decision in which they have a financial interest. Section 87100.

A financial interest exists whenever the reasonably foreseeable financial effect of a decision will be material^{6/} and distinguishable from the effect upon others in the general public^{7/} as to:

^{4/} The PCA requires borrowers to have on deposit (in the form of shares) an amount equal to at least 10% of the outstanding balance of the loan. As the loan balance is reduced, the shares may be redeemed to the PCA. They are not salable on the open market. In the past, dividends were paid on the deposits; now the dividends are passed on in the form of reduced interest on the loans. Thus, the shares are really like deposits or "shares" in a credit union.

^{5/} Section 87100.

^{6/} Defined by Commission regulation 2 Cal. Adm. Code Section 18702. (Copy enclosed.)

^{7/} Section 87103; see also 2 Cal. Adm. Code Section 18703. (Copy enclosed.)

(a) Any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000).

* * *

(c) Any source of income, other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103.

In your situation, none of the supervisors hold such an investment. Shares in a credit union are exempt from being considered an investment. Section 82034. Furthermore, while PCA loans of more than \$10,000 (outstanding balance) are reportable income [Sections 82030(a); (b) (8) and 87207(a) (5)], because the supervisors' loans are from a commercial lending institution,^{8/} made in the regular course of business,^{9/} and on terms available to the general public ^{10/} without regard to their official status,^{11/} they are not the basis for disqualification under Section 87103(c).

^{8/} PCA is a loan cooperative for agri-business in Colusa County, although a nonprofit cooperative, we believe that it is within the Act's meaning of the term "commercial lending institution." The term is not specifically defined in the Act, but clearly is intended to cover credit unions and the like.

^{9/} Mr. Lee Jackson has advised me that these loans were made in the regular course of PCA's business.

^{10/} You have advised me in a telephone conversation that loans are made to growers, crop dusters and many others who are involved in farm production. In Colusa County (the jurisdiction) agri-business as a whole is the predominant industry. Under our regulation 2 Cal. Adm. Code Section 18702(c), agri-businesses would then constitute a "significant segment of the public generally." Thus, PCA makes loans on terms which are available to the general public.

^{11/} Mr. Jackson has advised that the three supervisors' loans were not based in any way on their official status.

Harold Wilsey, Jr.
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CONCLUSION

The four supervisors in question do not have a financial interest as defined in Section 87103 relative to the consideration of purchase of the property from the PCA. consequently, they need not disqualify themselves under Section 87100.

Should you have further questions regarding this matter or need clarification of this advice, please do not hesitate to contact me at (916) 322-5901.

Sincerely,

Robert E. Leidigh
Counsel
Legal Division

REL:plh
Enclosures

COLUSA
COUNTY



COUNTY COUNSEL

COLUSA, CALIFORNIA
95932
PHONE 458-7890

HAROLD WILSEY, JR.
COUNTY COUNSEL
200 SIXTH STREET

February 6, 1984

Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Attention: Ms. Barbara Milman
General Counsel

Dear Ms. Milman:

I talked to Mr. Liedigh of your office last Friday about some written confirmation concerning a conflict of interest problem of the Board of Supervisors here in Colusa County.

The facts are these:

The Board recently purchased some real property across the street from the Courthouse upon which they intended to build a badly needed County office building.

In the meantime, a building owned by the Production Credit Association - Federal Land Bank, which is also across the street, came on the market and has been offered for sale to the County. If the price is right, the Board is unanimous in their feeling that the County should acquire the property, and that it would be very beneficial to the County and its taxpayers to do so.

The prospective seller is a farm loan cooperative and deals exclusively in that business. Its executives tell me it is a non-profit corporation, but after reading some of the cases on the subject, I would rather treat it as a corporation for profit for the purposes of this request.

Four of the five members of the Board are or have been borrowers from the Seller. It is required when borrowing that the borrower purchase stock in the organization and all are stockholders.

While one of the members, who is no longer a borrower, but is still a stockholder, is willing to sell his stock in order to divest himself of any financial interest, the other three, due to their financial situations, are required to keep theirs. I am satisfied that the holdings of the three are less than the 3% and 5% limitations set by §1091.5 of the Government Code. However, the value of the shares exceeds the \$1,000.00 limitation set by G.C. §87103.

There is no income from the stock. The one Board member who is willing to sell his stock holds stock of a value of less than \$250.00.

The County intends to hire 2 independent (non-local) Appraisers and an architect to determine what alterations to the building may be necessary or advisable. Prior to the time we go to that expense, we want to make sure we have a quorum eligible to vote on the matter.

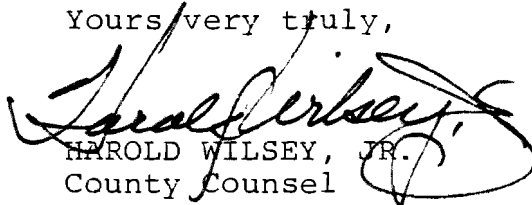
Given the value of the holdings, it does not appear that G.C. §1090 et seq. are involved.

We would like to follow the procedure set out in 61 A.G. Ops 243, 253 and implement the "rule of necessity" and follow the requirements of §18701, Title 2, Cal. Adm. Code. That opinion cites 4 FPPC Opinions 13 (No. 77-007). Your opinion is not available to me and I would appreciate a copy of it for my guidance.

Finally, it is my personal opinion that none of the Board members would be biased or influenced by their holding of stock in the seller corporation in the making of this decision. In fact, their collective attitude is to buy as cheaply as possible if the acquisition is affordable and practical. All feel it would be very beneficial to the County, if it can be done at the right price.

We will appreciate your suggestions and advice. If you need further facts, please let me know.

Yours very truly,


HAROLD WILSEY, JR.
County Counsel

HW:dbc

cc: Colusa County Board of Supervisors